

## Angola

# A PRELIMINARY APPRAISAL OF THE NORMATIVE GAINS FOR CHILDREN'S RIGHTS IN THE ANGOLAN CHILDREN'S ACT (ACT 25/12 OF 22 AUGUST 2012)

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### Résumé

Cet article traite de la loi angolaise de 2012 sur la protection et le développement holistique de l'enfant (Loi no 25/2012). Au départ, le projet de loi ne visait que les enfants de moins de 7 ans mais, telle qu'adoptée, la loi concerne finalement tous les enfants de moins de 18 ans. Il s'agit d'un texte dont l'objet est d'harmoniser le droit interne avec le droit international, notamment la *Convention internationale des droits de l'enfant* et la *Charte africaine des droits et du bien-être de l'enfant*. Le présent exposé s'intéresse particulièrement aux nombreuses dispositions de la nouvelle loi qui concernent la place de l'enfant dans la famille et les responsabilités de la famille à l'égard des enfants.

## I INTRODUCTION

The United Nations Convention on the Rights of the Child (UNCRC)<sup>1</sup> represents the most significant step towards the advancement of children's rights globally. Article 4 of the UNCRC requires states to take concrete measures to ensure the harmonisation of laws relating to children with the Convention's substantive provisions, including legislative and administrative measures. A similar duty prevails under the regional treaty, the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>2</sup> Angola is the most recent example of an African country which has enacted a children's statute to bring

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<sup>1</sup> United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, and entered into force in 1990, UN Doc A/RES/44/25 (1989) (hereinafter referred to as the UNCRC or UN Children's Convention).

<sup>2</sup> See art 1 of the African Charter on the Rights and Welfare of the Child (African Children's Charter or ACRWC), adopted in 1990 and entered into force in 1999, OUA Doc CAB/LEG/24.9/49 (1990).

domestic law in line with international law requirements.<sup>3</sup> The traditional link between children's rights and family law is evident in many UNCRC and ACRWC requirements. These include: the child's right to know and be cared for by both parents who shall bear responsibility for the upbringing and development of the child (UNCRC, art 18(1) and ACRWC, arts 19 and 20); the child's right not to be separated from his or her parents against their will unless so determined by competent authorities (UNCRC, art 9(1); ACRWC, art 19(2)); the right of a child who is separated to maintain personal relations and direct contact with both parents (UNCRC, art 9(2); ACRWC, art 19(3)), and the child's right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, whilst in the care of parents, legal guardians or any other person who has the care of the child (UNCRC, art 19(1); ACRWC, art 16(1)).

This chapter considers the recent legislative efforts to advance children's rights in Angola, with a special focus on those dimensions relevant to family law practitioners.

After this introduction, a brief overview of the current context in which children grow up in Angola is provided in Part II. Thereafter, an overall description of the Angola Children's Act<sup>4</sup> is given, highlighting the origins, scope and thrust of the Act (Part III). This will be followed, in Part IV, by an examination of some of the composite elements of the treatment of children's rights in the Act from a family law perspective. In that respect, the discussions explore topics such as the child's right to family life, violence against children in the home, the duties of the child and the obligations of parents, and the children's participation rights as regulated in the Angolan children's statute. The subsequent section, Part V, maps some of the weaknesses evident in the Act, and points out some of the gaps obstructing the implementation of international children's rights treaties in Angola. Possible avenues which can be utilised to improve the situation on the ground are proposed. Part VI assesses some of the benefits and gains that the Act may bring. The conclusion reiterates that despite some weak aspects in the Act which could be strengthened in order to advance the domestication of the UNCRC and the ACRWC, significant gains have indeed been made.<sup>5</sup>

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<sup>3</sup> Amongst others examples, African countries which have undertaken legislative reform to advance the children's rights protected in the UNCRC include Uganda (1996), South Africa (2005), Botswana and Tanzania (2009), Lesotho and Malawi (2011).

<sup>4</sup> Angolan Act for the Protection and Holistic Development of the Child (Act No 25/12 of 22 August 2012).

<sup>5</sup> Note that the Act is available in Portuguese only and therefore all translations provided in this chapter are unofficial and have been effected by the authors.

## II BRIEF OVERVIEW OF THE ANGOLAN CONTEXT

Angola is a relatively small country lying on the western side of the Southern African coastal region. The population of Angola is 18 million people,<sup>6</sup> and Portuguese is the official language inherited from the former Portuguese colonial administration.<sup>7</sup> About half of the country's population comprises children between 0 and 14 years.<sup>8</sup> Like other African countries, the majority of the population lives in rural areas. The country is affected by a myriad of diverse cultural and traditional beliefs, such as: early marriage; matrilineal and patrilineal customary family structures; and initiation rituals understood to mark the transition from childhood to adult life.<sup>9</sup> As it will be explained below, poverty and HIV/AIDS are also causes of concern in the country, although the oil deposits that provide the basis for considerable foreign investment also mean that the GDP of Angola is not low in comparison to other African countries.<sup>10</sup>

The diverse cultural practices and traditional norms affecting Angolan communities are important to understand the family role and its dynamics in the upbringing of children. They also help to explain the strengths and weaknesses in the current legislative framework for the promotion and protection of children's rights. This is mainly so in respect of children's rights which traverse family law matters. For example, the Act could have addressed certain Angolan customs like female genital mutilation which are practised in some communities. Such provision would have been in compliance with the ACRWC directive in art 21 to prohibit harmful social and cultural practices prejudicial to the health of the child and those that are discriminatory on the grounds of sex or other status.<sup>11</sup> Furthermore, as Angola has both patrilineal and matrilineal customary family systems, the law must ideally provide for specific standards which protect children raised in either family setting.

A bitter civil war that lasted almost two decades, ending only in 2002,<sup>12</sup> and the rapid spread of diseases such as HIV/AIDS in the past two decades, among

<sup>6</sup> Information available at [www.indexmundi.com/angola/population.html](http://www.indexmundi.com/angola/population.html) (accessed 10 April 2013).

<sup>7</sup> Karl Gadelli *Languages in Mozambique*, Africa and Asia, Goteborg working papers on Asian and African languages and literature (2001), No 1, p 1.

<sup>8</sup> Information available at [www.indexmundi.com/angola/population.html](http://www.indexmundi.com/angola/population.html) (accessed 10 April 2013).

<sup>9</sup> See generally Aquinaldo Mandlate *Assessing the implementation of the Convention on the Rights of the Child in Lusophone Africa (Angola and Mozambique)* (unpublished LL.D thesis, University of the Western Cape, 2012) 18–45.

<sup>10</sup> For a comparison of GDP in Sub-Saharan African countries see the World Bank statistics at <http://data.worldbank.org/region/sub-saharan-africa> (accessed 15 April 2013).

<sup>11</sup> Article 21 also requires states parties to outlaw child marriage, which too is not included in the Act under review.

<sup>12</sup> The Angolan civil war followed stages. The first stage went from the time of independence in 1975 until 1991 when the Bicesse Peace Accords were signed between the ruling MPLA and the UNITA rebels. However, in the following year the Bicesse Accords failed and the war broke out again for another ten years ending in 2002. See Fortna for details on the Bicesse Accords

other factors, account for the vast poverty that affects many Angolan families.<sup>13</sup> In this regard, the effects of the political crisis and the HIV/AIDS pandemic have forced families to involve children in economic activities. For example, in rural areas children work on small family farms and in urban settings they sell trinkets and food on the streets.<sup>14</sup> Notably, some of the children on the streets undertake these activities for the benefit of their family. Clearly, this leaves a wide margin to argue that there is need to align children's rights with existing family values and vice versa. The next section provides some overarching insights into the Angola Children's Act.

### III OVERVIEW OF THE ANGOLAN CHILDREN'S ACT

A noticeable aspect in the Angolan Children's Act is its explicit attempt to uphold the principles of the UNCRC and the ACRWC.<sup>15</sup> In this regard, the Act purports to be the primary instrument<sup>16</sup> in the Angolan domestic normative framework setting out standards for the promotion and protection of children's rights.<sup>17</sup> It provides clear obligations binding the Angolan state, parents, as well as society as a whole, to promote the implementation of these rights.

Generally, the Act contains a comprehensive list of civil and political rights protected in the UNCRC and the ACRWC and it includes a definition of the best interest standard as embedded in the former and the latter treaties.<sup>18</sup> However, the best interests standard is not elevated to a 'primary' (UNCRC) or 'paramount' (ACRWC) position, but 'shall be taken into account in the interpretation and development of the law and in the adjudication of disputes involving children'.<sup>19</sup>

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and the Angolan civil war in general, in Virginia Fortna 'A lost chance for peace: The Bicesse Accords in Angola' (2003) 4(1) *Georgetown Journal of International Affairs* 73–79.

<sup>13</sup> Mandlate n 9 above, 40–44.

<sup>14</sup> Line Eldring, Sabata Nakanyane, Malehoko Tshoaedi *Child labour in the tobacco growing sector in Africa* (report for the IUF/ITGA/BAT Conference on the Elimination of Child Labour, Fao Institute for Applied Social Sciences, Nairobi, 8–9 October 2000) p 48; copy on file with the authors.

<sup>15</sup> See Julia Sloth-Nielsen *Report on the analysis of the Angolan Act on the Promotion and Holistic Development of the Child (Act no 25/12 of 22 August 2012)*, Community Law Centre, University of the Western Cape, 4 March 2013 (unpublished). See art 1 (aims and objectives) of the Act which refers expressly to the UNCRC, the ACRWC and the Angolan Constitution (art 80), the most recent version of which is dated 2010.

<sup>16</sup> It is understood that there is a Family Code as well as a Penal Code which probably traverse some terrain covered in the Angolan Children's Act of 2012; however, the authors were not able to access these proclamations. Reference to the Juvenile Justice Act which also subsists alongside this new statute, is made below.

<sup>17</sup> See further details in art 1(3) of Act no 25/12 of 22 August 2012.

<sup>18</sup> See art 3 of the UNCRC and art 4 of the African Children's Charter.

<sup>19</sup> See art 3 of the UNCRC, art 4 of the African Children's Charter. Thus, art 6 of Act no 25/12 of 22 August 2012 (entitled 'the best interests of the child') provides that: '(1) the best interests of the child as well as the social values that the child represents and the child's special situation as a person in development shall be taken into account in the interpretation of the law and in the resolution of disputes involving children; (2) in the case of conflict between two norms, the

The Act contains 11 chapters in addition to a brief preamble capturing the aspirations and intentions of the Act as a whole. Besides setting out the inspirational base underlying the foundations of the law, the preamble also places emphasis on the obligation of the state and everyone in relation to the realisation of children's rights.<sup>20</sup> In addition, the preamble refers to the foundational framework of the '11 commitments for children', the role of which are discussed more fully below in this section.<sup>21</sup>

Chapter 1 (arts 1–9) define the objectives and key principles underlying the Act. The main principles of the UNCRC,<sup>22</sup> including non-discrimination,<sup>23</sup> the principle of the right to life, survival and development,<sup>24</sup> and the already mentioned 'best interest of the child' principle are incorporated in the Act.<sup>25</sup> Noticeably absent is an elaborate provision for the child's right to participate or to express views. This is a significant weakness that prevails throughout the Act.<sup>26</sup> Further, the child's right to dignity receives specific protection in art 8 which protects children from 'inhuman, cruel, violent, exploitative, humiliating, compromising or discriminatory treatment or other treatment which violates the dignity and physical integrity of the child'. The final provision (art 9) in chapter 1 of the Angolan children's statute outlines the general duties of parents (discussed more fully in Part IV of this chapter).

Chapter 2 (arts 10–37) regulates the rights and duties of the child, according to its heading. It is divided into five discrete sections, namely the general rights of the child,<sup>27</sup> the right to life and the right to health,<sup>28</sup> the right to live in a family and community environment,<sup>29</sup> special rights of the child,<sup>30</sup> and the duties of

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norm that best protects the interests of the child as provided in the subsection above shall take precedence; (3) for the purposes of the Act, the best interests of the child shall be understood as being everything required to defend and safeguard the child's integrity, identity, and for the development and maintenance of his or her wellbeing.'

<sup>20</sup> See para 1 of the preamble to the Angolan Children's statute.

<sup>21</sup> See para 2 of the preamble to the Angolan Children's statute.

<sup>22</sup> In this regard see para 12 of the Committee on the Rights of the Child (CRC Committee) General Comment No 5 on the General Measures for the Implementation of the Convention on the Rights of the Child, UN Doc CRC/CG/2003/5 (General Comment No 5).

<sup>23</sup> Article 2 of the UNCRC, art 3 of the ACRWC and art 4 of the Angolan Act. A noteworthy addition in the Angolan provision is the requirement that the state criminalise discriminatory practices and adopt measures to minimise the effects of discriminatory practices through its mechanisms (art 4(2)). Further, the last mentioned provision emphasises the particular vulnerability of children between the ages of 0 and 5 years, and also makes specific reference to the applicability of the non-discrimination provisions to refugee children who find themselves on Angolan territory.

<sup>24</sup> Article 6 of the UNCRC and art 5 of the ACRWC. The Angolan Act contains numerous provisions aimed at securing the right to life survival and development but for the purposes of this overview the entire Part 2 of chapter 2 of the Act (entitled 'Right to Life and Right to Health') is relevant to the elaboration of the right to survival and development.

<sup>25</sup> Article 3(1) of the UNCRC and art 4 of the ACRWC; see n 19 above for the text encapsulating the best interest standard in the Angolan law.

<sup>26</sup> Sloth-Nielsen n 15 above, 14–15.

<sup>27</sup> Articles 10–13.

<sup>28</sup> Articles 14–20.

<sup>29</sup> Articles 21–25.

the child.<sup>31</sup> Some of the prominent rights covered in the Act include the rights to education (arts 11–13), with special reference to the right to education of children who live nomadic lifestyles and the fact that (without prejudice to the general contents of education programmes), education for the nomadic child must ‘privilege the transmission of knowledge related to the daily activities of children in the communities envisaged, including knowledge related to natural resources and animals available in the areas where these communities reside and their sustainable usage’; the right to health (arts 14–20), which perhaps unusually in an Act dedicated to children, includes an article dedicated to the health of pregnant women and enshrines the guarantee of free prenatal services, as well as a provision on services for newborn children; the right to a name (and reference to the child’s right to use the surname of his or her parents (art 21)), and rights relating to children’s access (or non-access) to places of night entertainment (art 28) as well as an article dedicated to the protection of children in the context of the internet (art 30). The duties of the child outlined (arts 35–37) in the Act tie closely to the related provisions in the African Children’s Charter (art 30 of the ACRWC),<sup>32</sup> and embrace an African conception of children’s rights as being mirrored by corresponding duties to the family and the community. Although duties are commonly provided for in African children’s statutes, the Angolan text stands out insofar as it provides that the child has a duty to ‘behave well’, which is uncommon in other children’s statutes. Thus, art 37, which is the provision that elaborates this duty, states that:

‘Depending on his or her age and maturity, the child has the duty to learn and to respect the principles of good education, positive social conduct and he or she must cultivate cultural and patriotic values of the nation and respect its institutions and participate in the realization of the activities that make him or her an active agent of the community.’

Chapter 3 (arts 38–42) deals with child protection and child assistance for children placed in care institutions, for children who are at risk or find themselves in families needing assistance. The 2009 UN Guidelines on Children in Alternative Care<sup>33</sup> have clearly informed some of the text, as it is spelt out that institutional placements are to be as short as possible, and the focus must be on strengthening families. A clear preference for family type placement is articulated (art 41). However, the UN Guidelines are but partially assimilated, as insufficient elaboration of forms of alternative care and how they are to be regulated are provided, nor is it spelt out how children might end up in alternative care.<sup>34</sup>

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<sup>30</sup> Articles 26–33.

<sup>31</sup> Articles 34–37.

<sup>32</sup> This article is the subject matter of Julia Sloth-Nielsen and Benyam Mezmer ‘A dutiful Child: The implications of article 31 of the African Children’s Charter’ (2008) 52(2) *Journal of African Law* 159–189.

<sup>33</sup> United Nations Guidelines for the Alternative Care of Children, UN Doc A/HRC/11/L.13.

<sup>34</sup> Sloth-Nielsen n 15 above, 15 and 19.



Chapter 4 (arts 43–48) addresses jurisdictional measures relating to children in conflict with the law, a subject which obviously traverses the Juvenile Justice Act (*Lei do Julgado de Menores*) – in force since 1996 – and which is referred to in the text of art 43.<sup>35</sup> This article explains that the object of these jurisdictional measures is to strengthen mechanisms of implementation of that Act insofar as it concerns the application and enforcement of social protection, prevention and educational measures. The latter additionally enjoy articles (47 and 48) dedicated to their theme, viz, the prevention of juvenile delinquency and social reintegration and re-education. The principle of deprivation of liberty as a last resort is expressly confirmed (art 46). It has been noted, however, that the Angolan provisions in this section are copied directly from Mozambican legislation of 2008, which is probably inappropriate given the existence of an overarching statute concerned with juvenile justice in Angola.<sup>36</sup>

Chapter 5 (arts 49–51) incorporates the previously mentioned 11 commitments regarding the advancement of children's interests as defined by the government and its social partners.<sup>37</sup> These 11 commitments, adopted in 2011 by a Council of Minister's Resolution (Resolution no 5/08), are given 'force of law' via art 49(2) which provides that they constitute an integral part of the children's statute. The commitments apply across all areas of children's rights, civil and political, social and economic and include application in the family environment. They have to be implemented as a priority in government planning (see art 51, and the Regulation on the National Planning System Act no 1/11 of 14 January, referred to specifically in this article of the Angolan Children's Act). The 11 commitments feature in art 50(2) of the Act: life expectancy; food and nutritional security; birth registration; early childhood education;<sup>38</sup> primary education and professional training;<sup>39</sup> juvenile justice;<sup>40</sup> prevention of HIV/Aids and reduction of its impact on children and families;<sup>41</sup> prevention and mitigation of violence against children;<sup>42</sup> social protection and strengthening family capacities;<sup>43</sup> children and the media, culture and sport;<sup>44</sup> and finally children in the National Plan and in the Budget of the state.<sup>45</sup>

Even within the context of the 11 commitments, priority is required to be given to early childhood development (0–5 years of age), which harks to the genesis

<sup>35</sup> See generally the Angolan Juvenile Justice Act (Act no 9/96 of 19 April 1996).

<sup>36</sup> Mandlate n 9 above, 143.

<sup>37</sup> Including the United Nations Children's Fund (UNICEF).

<sup>38</sup> Commitments No 1–4.

<sup>39</sup> Commitment No 5.

<sup>40</sup> Commitment No 6.

<sup>41</sup> Commitment No 7.

<sup>42</sup> Commitment No 8.

<sup>43</sup> Commitment No 9.

<sup>44</sup> Commitment No 10.

<sup>45</sup> Commitment No 11.

of the Angolan Act: it was initially framed as an Act related to early childhood development and was only at the final hurdle expanded to apply to all children.<sup>46</sup>

From a broader perspective, the significance of the 11 commitments cannot be overstated in the quest to promote children's rights given that they identify clear goals, actors bearing responsibility for their implementation, coordination of the child protection system, coordination of the implementation of the Act more broadly, priorities, and timeframes for achievement.<sup>47</sup> A fuller discussion of these dimensions of the Act lies, however, beyond the scope of this chapter.

Chapter 6 (arts 52–59) and chapter 7 (arts 60–77) contain provisions setting out the system for the holistic protection and integral development of Angolan children and the respective guiding principles. Chapter 6, art 55, is relevant for the present purposes as it expounds the role of families in the envisaged system as discussed in the next section. Chapter 7 comprises a number of detailed articles which focus on early childhood development, on children with special needs,<sup>48</sup> on compulsory minimum health and water and sanitation services,<sup>49</sup> on nutrition,<sup>50</sup> early childhood education<sup>51</sup> and on birth registration.<sup>52</sup> Again, bearing the hallmarks of its initial conception as a law that would focus on children aged 0–5 years, these sections spell out in considerable detail the scope, nature and content of the duty (mainly upon state authorities) for the fulfilment of these provisions; again, however, a detailed consideration lies beyond the scope of this work although some are referred to in the conclusion.

Chapter 8 (arts 78–81) contains provisions regarding the support structures for the implementation of children's rights: these include legislative provision for a helpline,<sup>53</sup> the establishment of a national children's fund to receive and spend funding on activities and programmes to further children's rights and, notably, to promote activities which enhance the exercise of the right of the child to participate.<sup>54</sup>

Chapter 9 (arts 82–85) and chapter 10 (arts 86–88) make provision for budgeting as well as assessment of the implementation of the rights under consideration (monitoring and evaluation). This duty falls to a coordinating body called the *Conselho Nacional da Criança* (CNAC), which was established

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<sup>46</sup> See Terms of Reference developed by UNICEF Angola for an expert report on the Angolan Children's Act and the implementation of the UNCRC and the ACRWC, copy on file with the authors.

<sup>47</sup> For instance, by 2015 the Angolan government must increase the level of literacy among children to as much as 90% and reduce gender disparities in schools to 80%. See generally Commitment No 6.

<sup>48</sup> Article 67.

<sup>49</sup> Articles 70 and 71, respectively.

<sup>50</sup> Article 72.

<sup>51</sup> Article 74.

<sup>52</sup> Article 73.

<sup>53</sup> Article 78.

<sup>54</sup> Articles 80 and 81, respectively.



in 2007. Generally, the CNAC was tasked with the responsibility to coordinate actions regarding the implementation of all policies and initiatives affecting children, and to that extent, it will oversee the fulfilment of the provisions of the children's statute as well.<sup>55</sup> The CNAC is also tasked with advisory functions in relation to matters pertaining to children. To this end, it assists the Angolan government with opinions or advice on matters concerning the subject under consideration.<sup>56</sup> Moreover, the mandates of the CNAC have a national dimension and their wide extent makes it a key body to exercise the coordination of children's rights and the implementation function across all levels of government, from top to bottom and vice versa.

The last part of the statute, chapter 11 (arts 89–93), contains transitional provisions about the entering into force of the Act, provides for the promulgation of Regulations in conformity with the Act, and it repeals instruments which are inconsistent with the new provisions embraced under this law.

Thus, it can be concluded that the Angolan children's statute covers many of the key aspects which form part and parcel of the international law normative framework regulating the subject at hand. The inclusion of the 11 commitments in the text of the law brings concrete advantages to the possibilities of furthering children's rights through budgetary actions in Angola. Of significant importance for this discussion is the fact that some issues covered in the statute under analysis relate to family law and the responsibilities of parents and caregivers, although there is nevertheless a dedicated Family Code still in existence. The next section provides a detailed discussion of some of the family law dimensions of the new Act in an endeavour to identify the gains made thus far in this specific area of child law reform.

## **IV SOME ELEMENTS OF THE ANGOLAN CHILDREN'S LAW IMPACTING ON FAMILY LAW**

### **(a) Overarching role of the family in fulfilling children's rights**

A starting point for the discussion on this section relating children's rights to family law under the Angolan statute is the fact that the family is an important societal institution which forms the basis of the community within which children's rights are supposed to be enjoyed.<sup>57</sup> To this end, children's rights can only be understood by gauging them within the environment within which they are exercised, and in particular, the family setting is viewed as the basic unit of

<sup>55</sup> See Decree No 20/07 of 20 April 2007 on the establishment of the Angolan National Council for Children and the specific regulations (Decree No 20/07).

<sup>56</sup> See generally art 3 of Decree No 20/07.

<sup>57</sup> See Danwood Chirwa 'The merits and the demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *The International Journal of Children's Rights* 167.

society.<sup>58</sup> This is well established in Angolan law via (especially) art 55 which provides that the duty to educate and ensure the development of the child rests primarily upon the family, with parents being the first bearers of this duty.<sup>59</sup> This same section enjoins caregivers, including parents, to ensure fulfilment of children's best interests as their primary concern (art 55(3)); to ensure adequate guidance and direction for the child in the exercise of his or her rights, in an atmosphere of trust and affection (art 55(3)); and a duty is imposed at all levels and in all sectors of the state to provide support to families parents and caregivers to assist them to fulfil their child rearing duties (art 55(5)).

Further guidance is provided by art 9, which falls in the first chapter of the Act dealing with general provisions. The provisions states that:<sup>60</sup>

'(1) Without prejudice to what is provided in the law, parents have the duty to provide for the maintenance, custody and education of their children.

(2) In the best interests of their children, parents have the duty to guide them through the educational process and promote their wellbeing and development, as well as the duty to comply with and ensure compliance with judicial decisions.

(3) Parents are also required to meet the expenses relating to the safety, health, education and full development of the child until such a time that the child becomes legally capable of providing for him or herself.'

Further to the above is art 21, which falls in section II of chapter 2 (this section is entitled 'right to live in a family and community environment'). Article 21(1) provides for the right of every child to have a family, to know and to relate with his or her parents and other family members in a healthy and harmonious manner. The concluding paragraph of art 21 further requires the state to ensure within the terms of the law that the child preserves his or her identity, including nationality, family name and family relations. Again a broader (African) concept of family is provided for, and the article envisages in rather strong terms the preservation of ties with this kinship circle.<sup>61</sup>

That there is some overlap between art 9, art 55 and arts 21, 22, 25 and 26 is patent, and it is not clear why the role of parents and families needed to be addressed in three separate places in the Act. It is likely that this came about when the shift from a specialised Act devoted to early childhood changed to a

<sup>58</sup> See Binh for the role of the family in educating and socialising children, in Nguyen Binh 'The role of the family in educating–socialising children: The case of Vietnam' (2012) 4(2) *Current Research Journal of Biological Sciences* 173–181.

<sup>59</sup> This is clear exposition of the broader concept of kinship and wider family circle as having duties towards children, which is prevalent in African custom and society.

<sup>60</sup> See generally, art 9 of Act no 25/12 of 22 August 2012.

<sup>61</sup> The Act does not provide for adoption: however, this may feature in the Family Code. Removal of children by reason of abuse or neglect, and possible termination of parental responsibilities and rights are not clearly spelt out in the Act and it has been concluded that the provisions on child protection remain weak in the overall schema of the Act (Sloth-Nielsen n 15 above, pp 14 and 26). Article 24(4) does, however, note that 'the prohibition or exercise of parental power shall only be declared pursuant to a judicial decision in a court of law'.

more generally applicable one, and that this issue was overlooked.<sup>62</sup> However, art 55 does bear the additional significance that it enshrines the duty upon the state to support parents and families in the fulfilment of their parental responsibilities, as required by both the UNCRC and the ACRWC.<sup>63</sup>

Additionally, it may be significant that reference is made to the need for parents to fulfil their responsibilities in 'an environment of trust and affection, based on respect and understanding',<sup>64</sup> which epitomises a rights-based approach cognisant of the child as an individual bearer of human rights and his or her own dignity. It turns on its head the often expressed view that in African culture, children are not perceived as bearers of rights and are rather seen as property of the family and clan.<sup>65</sup>

Importantly, art 24 grants men and women equal rights and responsibilities in respect of their children, which is an important advance in a patriarchal society based on customary law. Such equality in respect of the fulfilment of parental responsibilities and rights is also required by the African Women's Protocol.<sup>66</sup> No distinction is drawn on the basis of the marital status of the parents;<sup>67</sup> it is not known whether or not this provision in any way alters the provisions of the Family Code. However, it clearly overcomes the potential for discrimination based on whether children are born into patrilineal or matrilineal customary law systems. No provisions outline how these equal rights and responsibilities are to be exercised, nor what is to occur should disputes in the exercise of parental powers arise.

In keeping with international best practice, including the UN Guidelines on Children in Alternative Care, art 24(2) provides that in the best interest of the child, the lack of or limited availability of resources (ie poverty) is not a sufficient reason to determine the loss of or suspension of the right to exercise parental powers. Rather the child must remain within the natural family and

<sup>62</sup> As mentioned, it is also not clear the extent to which the sections described here alter, amend or confirm the provisions of the Family Code since the authors were not able to get access to this.

<sup>63</sup> See art 18(2) of the UNCRC and art 18(1) of the ACRWC. This commitment from the state to support parents is reiterated in art 25 of the Act in a different language.

<sup>64</sup> Article 55(4). See further art 26 which grants the child the 'right to grow up surrounded with love, care and understanding and in an environment of happiness, peace and security'. The child furthermore has the right to live in a family 'based in respect for its members, particularly the elders, and where the Angolan identity, traditions and socio-cultural values are strengthened' (art 26(2)).

<sup>65</sup> Thoko Kaime *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective* (University of Pretoria Law Press (PULP), 2009) 116.

<sup>66</sup> Article 6(c) and 6(i) of the protocol to the African Charter on the Rights of Women in Africa (African Women's protocol), adopted in the 2nd Ordinary Session of the General Assembly of the African Union, Maputo 2003. Angola ratified the African Women's Protocol in 2007.

<sup>67</sup> See Julia Sloth-Nielsen, Nkatha Murungi and Lorenzo Wakefield 'Does the differential criterion for vesting parental rights and responsibilities of unmarried parents violate international law? A legislative and social study of three African countries' (2011) 55(2) *Journal of African Law* 203–229, for a study of disparate treatment of unmarried parents in three recent children's rights statutes, viz, Kenya, South Africa and Namibia.

child assistance programmes must be mandatorily developed (art 24(3)). Article 55 repeats this injunction, requiring the state at all levels to provide support to families, parents and caregivers to assist them to carry out the responsibility of upbringing their children fully. This is to be achieved, according to that article, through the establishment of child support institutions, facilities and services.

There is no express reference in the Act to the provision of financial support in the form of cash transfers to poor families, though expanding cash transfer schemes are being implemented for the most vulnerable families in many countries in the region, including Namibia, Tanzania, Kenya and South Africa. Even where the Angolan Act provides for the most vulnerable children, such as in art 77(2) providing for compulsory minimum services for the most vulnerable children, including emergency services, and with a focus on the first years of a child's life, social assistance in the form of direct transfers is not mentioned. However, art 76(2)(c) refers to the establishment of 'social reference centres' to prevent and follow up on situations of children at risk.<sup>68</sup>

### **(b) Violence against children in the family**

The problem of violence against children in the home (parental corporal chastisement) is yet another area of children's rights which interfaces with family law. The link between the two can be discerned from the text of art 19 of the UNCRC, and obliquely in art 20(1)(c) of the ACRWC as well as more directly from the call made by the Committee on the Rights of the Child to the effect that states parties to the Convention must include in their respective family statutes in their domestic jurisdictions provisions which prohibit any form of violence committed against children.<sup>69</sup> To this effect, the prohibitions envisaged by the Committee include, but are not limited to, the need to address the problem of parental corporal punishment and other forms of cruel and inhuman and degrading treatment or punishment committed against children by their caregivers.<sup>70</sup>

In deference to recent studies on violence against children, and the calls in international and regional children's rights standards for violence against children to be prohibited, the Angolan child law unequivocally outlaws (in art 7 of the statute) any form of cruel treatment or violence committed against

<sup>68</sup> These are not defined. There are no definitions included in the Act.

<sup>69</sup> See generally para 35 of Committee on the Rights of the Child General Comment No 8 on the Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment, UN Doc CRC/GC/8 (General Comment No 8), UN Doc CRC/C/GC/8.

<sup>70</sup> In this regard see for example, para 1 of the Report of the Independent Expert for the United Nations study on violence against children, UN Doc A/61/299.

children.<sup>71</sup> However, contrasting to this clear statement, art 10 (guidance and discipline) muddies the water somewhat, it is submitted. Article 10 commences as follows:

‘... in safeguarding the right to respect of the dignity and physical, mental or moral integrity, he or she has the right to be guided and to be disciplined in accordance with his or her age, and his or her physical and mental condition.’

The next part of art 10 continues that ‘no corrective measure applied to a child can be justified if by virtue of his or her tender age or any other reason the child is unable to understand the purpose intended by the measure’. Unless the translation from Portuguese is faulty, it is suggested that this provision (using the words ‘corrective measure’) could be used to justify the imposition of corporal punishment by parents provided the child understands the purposes of the measure. The subclause clearly permits corrective measures but does not detail what these may – or may not – comprise. Arguably, this is even weaker than the reasonable chastisement defence available in Anglophone jurisdictions, as at least proportionality in some degree is required for a defence of reasonable chastisement to succeed.<sup>72</sup> The formulation of the second part of art 10 provides no such limitation on the form or intensity or proportionality of the ‘corrective measure’. Further, it is arguably confusing to use words such as ‘discipline’ and ‘corrective measure’ in the same chapter of the Act.

The Committee on the Rights of the Child’s General Comments No 8 (on corporal punishment)<sup>73</sup> and No 13 (on violence against children)<sup>74</sup> refer, and constitute the acceptable international standard in this area: corporal punishment in all settings should be prohibited. There is also no reference to the setting(s) in which the overall prohibition in art 10 applies, since it does not single out guidance and discipline by parents, guardians or caregivers. As it falls in a general section headed ‘General rights of the child’, it could be concluded that it applies in all settings. This leaves too much uncertainty and vagueness and opens the door to diminishing the protection accorded to a child.

Further to the above, though, art 8 of the 2012 Angolan Act requires all citizens to protect the child from ‘inhuman, cruel, violent, exploitative, humiliating, compromising or discriminatory treatment or other forms of treatment against the dignity and physical integrity of the child’; the question

<sup>71</sup> Article 7 provides that ‘the child shall not be treated in any negligent, discriminatory, violent or cruel manner, nor shall he or she be subjected to any form of exploitation or oppression. Any practices violating these prohibitions shall be punishable under law’.

<sup>72</sup> See generally, Kleynhans for details on the concept of reasonable chastisement and the defences thereto as used in the South African context, in Deidre Kleynhans *Considering the constitutionality of the common law defence of ‘reasonable and moderate chastisement’* (unpublished LLM thesis, University of Pretoria, 2011).

<sup>73</sup> See generally, CRC Committee General Comment No 8.

<sup>74</sup> Committee on the Rights of the Child General Comment No 13 on the Rights of the Child to Freedom from All Forms of Violence (CRC Committee General Comment No 13), UN Doc CRC/C/GC/13.

arises as to the relationship between art 8 and art 10, which is not clear. What if the corrective measures permitted by art 10 contravene the provisions of art 8?

Mention should also be made of the provisions of art 24, which poses potential problems in relation to parental discipline. Article 24(1) states that '[e]ither parents, the father or the mother, can exercise *parental powers* on equal conditions as provided under the terms of the law'.<sup>75</sup> The reference to parental powers (rather than the modern notion of parental responsibilities and rights) raises the spectre of a return to an old style conception of parental authority as including rights to physical chastisement.<sup>76</sup>

Article 76(2),<sup>77</sup> however, can be lauded as a fairly innovative and comprehensive response to the reports of the UN Secretary General's Special Representative on Violence against Children. This article contains a detailed elaboration of measures to be undertaken to combat violence against children generally, including: the dissemination and promotion of information in the media relating to violence prevention; the provision of services of protection and social assistance to strengthen family capacity and improve basic services and eliminate the impact of poverty upon children who are orphaned, those who are vulnerable and those with special needs; the identification of high-risk families on the basis of general health tests and in schools; ensuring broadly the protection of children against all forms of abandonment, discrimination, oppression, exploitation and abusive exercise of authority whether in the family or other institutions; monitoring the implementation of standards related to the functioning of child protection institutions; ensuring access to legal protection for children who are victimised or for those who witness crimes and acts of violence, as well as provision of psycho-social support for such children; and locating children who are separated from their families with the aim of reunification. The remainder of the provisions of this article spell out which government department bears primary responsibility for implementing each of the above duties.<sup>78</sup>

It cannot therefore be concluded that the Angolan Act has failed to pay attention to the issue of violence against children; despite some initial misgivings about the manner in which parental chastisement has been provided for (as highlighted above), the Act does comprehensively deal with the issue at a societal level.

### **(c) The duties of the child**

The conceptualisation of duties for children is one of the prominent features of the African Children's Charter. It is unique in relation to other children's rights

<sup>75</sup> Emphasis added.

<sup>76</sup> See [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org) for a list of African countries which have or have reported to have prohibited corporal punishment in all its manifestations.

<sup>77</sup> This article falls in the part of a chapter dealing with compulsory minimum services and duties.

<sup>78</sup> See generally, art 76(3)–(7).



instruments, which are silent on the subject.<sup>79</sup> As Chirwa notes, the incorporation of duties for children under the African Children's Charter has the effect of giving implied recognition of the fact that like adults who have duties regarding the promotion and protection of rights and welfare of the child, children, too, have responsibilities depending on their evolving capacities.<sup>80</sup> In the family setting, the exercise by children of their duties contributes to the general well-being of family members. For example, if they respect elderly family members, it is more likely that the elders will also respect children's rights.

Importantly, like the African Children's Charter, the Angolan law incorporates duties for children. Relevant to this discussion are provisions in section V of chapter 2 (which chapter is titled 'Rights and Duties of the Child'). Article 34 incorporates the duty of the child to respect his or her parents, family members and elders;<sup>81</sup> art 35 alludes to the duty to participate in the life of the family and the community, in the preservation of the environment, and in the development of the country in accordance with the child's age and maturity; art 36 enshrines the duty to contribute towards the strengthening of the family and the cultural values. Furthermore, according to art 37, the child also has 'the duty to learn and to respect the principles of good education, positive social conduct, and to cultivate respect for the institutions of the nation so as to enable the child 'to become an active agent of the community'.<sup>82</sup> All of these duties contribute towards the creation of families based on respect for the views and the values of the collective group of its entire members.<sup>83</sup> To this end, it can be argued that considerable weight should be attributed to the children's statute of Angola for its attempt to develop stronger family ties based on enjoyment of rights, exercise of respect and responsibilities for all members, including adults and children alike.<sup>84</sup>

<sup>79</sup> See Chirwa n 57 above, 169.

<sup>80</sup> As above. See also Sloth-Nielsen and Mezmur n 32 above, 159–189.

<sup>81</sup> Teachers, educators, elderly persons, persons with disabilities are also referred to in this part of the text.

<sup>82</sup> See arts 34–37 of Act no 25/12 of 22 August 2012.

<sup>83</sup> It is laudable that the attribution of individual duties for the realisation of the common good of the community is one of the characteristics of the African tradition. For details see Sloth-Nielsen and Mezmur n 32 above, 160–162.

<sup>84</sup> However, the deliberate placement of art 31 of the African Children's Charter at the end of the list of rights is done to emphasise that duties do not negate or override the rights of the child. Moreover, the Charter text subjects the duties it elaborates to adherence to all the previously articulated rights. Therefore the duty to contribute to the well-being of the family cannot be used to justify breaches of other provisions (e.g. protecting from child labour). The position of the articles dealing with duties in the Angolan statute is also a bit odd. It does not follow the customary position (as in other comparable legislation) of being placed after the section on rights, but is far removed from the section dealing with the rights of the child (which are in chapter 1, section 1: General Rights of the Child).



**(d) Children's participation rights in the Angolan child law**

Possibly as a result of its original conception as a policy or statute that would focus on early childhood development only, various dimensions of a children's right to express views and have them accorded due weight are absent from the current text. For instance, there are no provisions spelling out an age of consent to medical treatment or surgical operations, such as is the case with ss 129–134 of the South African Children's Act 38 of 2005.<sup>85</sup> The right to representation in judicial or administrative proceedings affecting the child (art 12(2) of the UNCRC) does not appear.<sup>86</sup> Even in the part of Act dealing with juvenile justice, as referred to above, express provision for legal assistance is not provided (though this may feature in the Juvenile Justice Act).<sup>87</sup>

Further, art 65 (which is entitled 'principle of the respect for the rights of the child') seeks to embody in legislative form a principle that guarantees a child the exercise of his or her rights (presumably, those laid out in art 1 of the Act which deals with the rights of the child, although this is by no means clear) and which has the objective of facilitating the child's development, his or her protection and *his or her participation in society*. Whilst not being wrong, this is not the same as providing for a right to participate in decisions on matters affecting the child, which may be taken at household, community, judicial or other level, as well as more broadly on a societal level.

Similarly, the child in institutional care has the right to participate in the life of the surrounding community (art 41(c)), but there is no reference to participation in the organisation of the institution itself where the child is of an age and maturity to participate, such as where children have their own representative body which can liaise with management.<sup>88</sup>

This can be seen as a gap in the overall scheme of the law insofar as it purports to domesticate international children's rights principles.

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<sup>85</sup> See ss 129–134 of the South African Children's Act 38 of 2005.

<sup>86</sup> The right to representation is an important part of the due process rights accorded to children in international law standards. Odongo highlighted the need to domesticate these standards in national legislation. See generally, Godfrey Odongo *The domestication of international law standards on the rights of the child with specific reference to juvenile justice in the African context* (unpublished LLD thesis, University of the Western Cape, 2005).

<sup>87</sup> *Lei do Julgado de Menores* or Angolan Juvenile Justice Act No 9/96 of 19 April 1996.

<sup>88</sup> It is common in this regard to enhance the participation of children in child or youth parliament/council. This type of representative body is growing on the continent in countries like Nigeria and Mozambique, for example.

## **V SOME OF THE PRESSING GAPS IN THE ANGOLAN CHILDREN'S ACT**

Despite the incorporation in the Angolan children's statute of multiple elements of children's rights as highlighted above, some issues have not been addressed sufficiently. A few of these are detailed next.

### **(a) Weaknesses relating to the African Children's Charter**

The Children's Act makes no clear provision covering the specificities of the ACRWC in several instances. One is the general prohibition against harmful social and cultural practices; in addition, it has become customary for a Children's Act to identify locally specific harmful cultural and social practices and to ensure legal protection for children through prohibiting them by name, or by regulating them. Examples in point include legislation prohibiting female genital mutilation or cutting (where this prevails) and laws prohibiting or regulating virginity inspection and circumcision, by requiring consent by a child over a certain age.<sup>89</sup> Criminal sanctions for violations are often provided for in the body of the Act. This is a gap in the Angolan context, as no references to harmful cultural practices occur.

Another example of where the specificities of the ACRWC have not been explicitly incorporated relates to the introduction of a minimum age of marriage of 18 years; the Charter provides for no exception in this regard, including for marriages under customary law. Forced marriage of children can also be usefully addressed in an overarching children's statute, and a criminal offence created for anyone, including a parent or guardian, who gives a child in marriage or betroths a child below the age of 18 years.<sup>90</sup>

The prohibition of the use of children in begging is a primary response to the exploitation of children in the African Charter text.<sup>91</sup> Many African countries have (or are in the process of) domesticating this principle (eg Namibia and Kenya). The 2012 Angolan Act does not refer to this important provision and thus misses again the opportunity to adhere to Charter norms.<sup>92</sup>

### **(b) Weaknesses relating to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography**

There is evidence of partial domestication of some of the elements of the Optional Protocol<sup>93</sup> in the text of the 2012 Angolan Children's Act. For example, art 30 deals with protection of children regarding the internet, and

<sup>89</sup> See for example s 12(5) of the South African Children's Act 38 of 2005.

<sup>90</sup> Sloth-Nielsen n 15 above, 2.

<sup>91</sup> See art 29 (b) of the African Children's Charter.

<sup>92</sup> Sloth-Nielsen n 15 above, 2–3.

<sup>93</sup> Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, (Optional Protocol on the Sale of

art 32 concerns the protection of children against inappropriate materials. Moreover, art 33 addresses the protection of children against abduction and abuse, and the provisions of art 33(1) also refer to sale of and traffic in children. However, there are aspects that have not yet been fully covered. These include, for instance, concretely prohibiting the sale of children, since art 33 is not strongly worded and simply requires the state to adopt measures designed to avoid, punish and implement effective measures against the abduction, sale and traffic of children and does not expressly outlaw these. It should be observed that art 3 of the Optional Protocol requires express coverage of the listed behaviours in criminal or penal law. In the context of children's rights and family law, the incorporation of these standards can provide relief for the problem of children who are sold or trafficked by their own family members, as families are sometimes involved in such illicit practices.<sup>94</sup>

The Children's Act can be criticised for failing to make provision for the extraterritorial application of criminal laws relating to the sexual exploitation of children for offences committed by Angolans outside the borders of Angola, and for the prosecution in Angola of citizens who perpetrate sexual exploitation of children outside the borders of Angola. Once again, this is of some importance as relatives can also be involved in illicit acts of sexual exploitation of children.<sup>95</sup> The law also lacks detailed provisions dealing with trafficking to ensure that trafficked children are provided with legal protection; including extraterritorial application of anti-trafficking provisions for acts of trafficking committed outside Angola; and providing specific penalties for traffickers.

### **(c) Weaknesses relating to the Hague Convention on Civil Aspects of International Child Abduction**

Angola has not ratified this treaty,<sup>96</sup> but it is a worthy addition to the child protection armoury as it provides for the establishment of mechanisms to ensure the prompt return of children wrongfully removed from their place of habitual residence by a person with rights of custody (usually a parent). The lead for this is to be found in art 22(2) of the Angolan Act which provides for the '[s]tate to undertake all measures to ensure that the child is not separated from his or her parents without their consent'. Therefore, the adoption of the International Child Abduction treaty would be an important measure to give life to art 22(2).

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Children), GA Res 54//263, Annex II, 54 UN GAOR Supp (No 49) at 6, UN Doc A/54/49, Vol III (2000), entered into force on 15 January 2002. Angola ratified the Protocol in 2005.

<sup>94</sup> See generally, International Programme on the Elimination of Child Labour (IPECL) *Child trafficking – The people involved: A synthesis of findings from Albania, Moldova, Romania, and Ukraine* (The International Labour Organisation (ILO) and IPEC, 2005).

<sup>95</sup> There is currently a case being investigated in Namibia involving sexual exploitation committed in Angola by a citizen with joint Namibian and Angolan citizenship (personal information received from the Namibian Police, February 2013).

<sup>96</sup> Hague Convention on Civil Aspects of International Child Abduction adopted on 25 October 1980 and entered into force in 1983.

Although there is separate Family Law Code<sup>97</sup> which governs aspects of the parent–child relationship, it cannot be left out of the equation that the 2012 Angolan Act also contains family law provisions, as highlighted above. Yet the interplay between the Family Code and this new law remains murky, and it is not clear how the two complement each other.<sup>98</sup> Although express reference is made in the body of the 2012 Act to the Juvenile Justice Act, no internal references to the Family Code could be found. This must be a subject for further research.

#### **(d) Weakness regarding the Convention on the Worst Form of Child Labour**

Possibly because the 2012 Act was originally conceptualised as a law dealing only with early childhood development,<sup>99</sup> it is silent on child labour, which is a significant gap. Measures to domesticate the above Convention need to be considered, such as outlawing bonded labour and slavery, prohibiting the involvement of children in hazardous work, prescribing the specific forms of work to be regarded as hazardous in the Angolan context including those that are implemented within the household and in family settings, and establishing the link between trafficking and exploitative forms of labour. Even if child labour is dealt with in labour legislation, there needs to be a proper link to this Act, and cross-references added. Moreover, labour legislation should be scrutinised carefully to ensure that child labour (including in its worst forms) is comprehensively covered.<sup>100</sup>

In the absence of a series of provisions dealing with child labour, the provisions of art 32 of the UNCRC and art 15 of the African Children's Charter remain under-domesticated (in addition to the ILO Convention referred to above). Moreover, the risk remains for children to be used in the family setting to provide labour or as means of support for elderly family members instead of going to school to obtain an education.

## **VI BENEFITS AND GAINS OBSERVED**

The genesis of the Act as a statute focusing on early childhood development has resulted in several substantive provisions which can be regarded as groundbreaking. The focus on children under 5 remains evident from numerous sections, where services to this age group are stated to be the priority (see for example art 51(1) (on implementation of the 11 commitments); art 56(b) and (d) (allocation of budgets for early childhood); article 60 (strengthening the mechanisms for the exercise of children's rights especially in early childhood),

<sup>97</sup> Act No 1/88 of 20 February 1988 (Family Law Code of Angola).

<sup>98</sup> See Sloth-Nielsen n 15 above, 5.

<sup>99</sup> See Aquinaldo Mandlate *Draft report on the analysis of the Angolan Child Act* (2012) pp 3–4, copy on file with the authors.

<sup>100</sup> See Sloth-Nielsen n 15 above, 7.

etc. This focus also accords well with the 11 commitments of the Government of Angola, since commitments 1, 2, 3 and 4 relate to early childhood. The Act provides expressly for a national vision on focusing service delivery on early childhood (up to 5 years of age) in art 61, and for an integrated approach to service delivery and actions aimed at promoting the child's development in early childhood (art 51(2)).

Some further innovations include art 17 which provides for substantive services for pregnant women and newborns. These are some of the most direct obligations in the entire Act. For instance, the obligation upon public and private entities to ensure the provision of health care services for pregnant women and newborns, to keep records of all assistance in separate files, to undertake tests to diagnose any abnormalities, to provide information on health, nutrition, hygiene and the advantages of breastfeeding, to co-operate with the competent authorities to ensure registration of birth and to ensure that newborns are kept with their mother, all enshrine progressive and fairly key maternal health policy directives in legislative form.<sup>101</sup>

Similarly, the provisions of art 18 on breastfeeding, which applies to all public and private institutions, constitute an advance when compared to other children's statutes in the region. In the same vein, the provisions of art 20 of the Act on vaccinations and the obligation upon caregivers to vaccinate their children upon recommendation by national and international health bodies removes any parental discretion in accepting the utility of vaccinations as a preventive health measure.<sup>102</sup>

In a similar vein, art 63 provides for a right to education in early childhood. Whilst there are extensive provisions in the South African Children's Act related to early childhood and development (in fact a dedicated chapter is devoted to this),<sup>103</sup> the South African example does not go so far as establishing this as a *right* of the child. The Angolan Act therefore advances the legal framework in this respect. Further, this is to be provided free of charge, and is to be compulsory. Whilst much has been written about free and compulsory basic or primary education (see art 28 of the UNCRC, for instance), this is the first time that policy or legislation authorising free and compulsory early childhood education has been encountered in the African context. Obviously, if this is feasible for a country of the socio-economic and developmental status of Angola, it would be regarded as a hugely progressive advance in the African context, given that very few children would have access to early childhood education at their own expense. Note that art 63(1) mentions that the state 'must guarantee free and compulsory education in early childhood *from the very first days of a child's life*.'<sup>104</sup>

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<sup>101</sup> See generally art 17.

<sup>102</sup> See generally arts 18 and 20.

<sup>103</sup> See chapter 6 of the South African Children's Act 38 of 2005 which is dedicated to this theme.

<sup>104</sup> Sloth-Nielsen n 15 above, 25, emphasis added.

The Angolan Children's Act of 2012 contains commendable attention to detail as regards HIV/Aids: notably in art 75, entitled 'HIV/Aids'. These spell out specific duties for the health sector, and focus on the survival and development of the child. However, they are explicitly focused on the infant (art 1 refers to the first years of the child's life) and fail to take account of concerns regarding HIV/Aids and sexual and reproductive health in relation to teenagers (see too General Comment No 4: Adolescent Sexual Health and the Rights of the Child).<sup>105</sup> Hence, issues relating to consent to HIV testing of the competent child are not dealt with.

The early childhood development thrust of the Act is underscored by detailed sections on nutrition (art 72) and birth registration (art 73). These are amongst the longest sections of the entire Act, and are suitably specific, especially as regards the section on nutrition. The sections on birth registration are more detailed than in any other comparable (children's) statute, and most noticeably provide for free registration immediately after birth (art 73(2)(a)) and for all children up to 5 years of age. It would have been good to have free birth registration provided for children who have not yet been registered (late registration) to catch up on all those who remain outside the birth registration system, but as a start, free registration for all from 0 to 5 is a very positive development.<sup>106</sup> Compulsory minimum services for early childhood health services (art 70) and for water, sanitation and hygiene (art 71) also set new parameters in children's law and must therefore be welcomed.

## VII CONCLUSIONS

The Angolan Children's Act of 2012 is an aspirational document. It aims to coordinate services (with a focus on early childhood development), to enshrine rights and to provide a platform for development. Containing many innovative provisions,<sup>107</sup> it clearly sets Angolan authorities at all levels on a path to the improved fulfilment of children's rights. Insofar as these rights are best realised in a family environment, the Act privileges the family as the site where services are to be concentrated, and ensures that separation of children from their families will be a last resort. It can in many respects serve as a benchmark for statutory developments in the region.

<sup>105</sup> Committee on the Rights of the Child General Comment No 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child (CRC Committee General Comment No 4), UN Doc CRC/GC/2003/4.

<sup>106</sup> Sloth-Nielsen n 15 above, 26.

<sup>107</sup> Mandlate expressed a similar view in Aquinaldo Mandlate *Child law reform in Africa: What lessons can we learn from the Angolan experience?* (paper presented at the 16th Miller du Toit Annual Conference, 12 April 2013, Clocktower Hotel, Cape Town, South Africa).

